

HOUSE BILL 381

K3
HB 13/09 – ECM

0lr1359

By: **Delegates Manno and Rosenberg**
Introduced and read first time: January 28, 2010
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Workplace Religious Freedom Act**

3 FOR the purpose of authorizing employees of certain employers to use certain leave for
4 observance of religious beliefs under certain circumstances; establishing that an
5 employer is not required to pay certain premium wages or benefits under
6 certain circumstances; providing that an employee who uses leave under this
7 Act must comply with the terms of a collective bargaining agreement or
8 employment policy; providing that an employer may require an employee
9 without paid leave to use leave without pay or work a certain number of hours;
10 providing for a certain exemption under certain circumstances; establishing
11 certain criteria for determining a certain hardship; prohibiting an employer
12 from taking certain actions against an employee who exercises certain rights,
13 files a complaint, testifies against, or assists in a certain action; authorizing an
14 employee to take certain civil action against an employer in a certain manner
15 for a violation of this Act; authorizing a court to allow certain costs against an
16 employer for a certain recovery in a certain action; prohibiting an employee
17 from making certain groundless or malicious complaints or from taking certain
18 actions in bad faith; authorizing the Commissioner of Labor and Industry to
19 conduct a certain investigation; defining certain terms; providing for the
20 application of this Act; and generally relating to the Workplace Religious
21 Freedom Act.

22 BY repealing and reenacting, without amendments,
23 Article – State Government
24 Section 20–606(a)
25 Annotated Code of Maryland
26 (2009 Replacement Volume)

27 BY repealing and reenacting, without amendments,
28 Article – Labor and Employment
29 Section 3–101(b), 3–704(b)(2) and (3), (c), and (f), and 3–802(a)(1) and (3)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2008 Replacement Volume and 2009 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Labor and Employment
5 Section 3–102 and 3–103
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2009 Supplement)

8 BY adding to
9 Article – Labor and Employment
10 Section 3–803
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2009 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – State Government**

16 20–606.

17 (a) An employer may not:

18 (1) fail or refuse to hire, discharge, or otherwise discriminate against
19 any individual with respect to the individual’s compensation, terms, conditions, or
20 privileges of employment because of:

21 (i) the individual’s race, color, religion, sex, age, national origin,
22 marital status, sexual orientation, genetic information, or disability unrelated in
23 nature and extent so as to reasonably preclude the performance of the employment; or

24 (ii) the individual’s refusal to submit to a genetic test or make
25 available the results of a genetic test;

26 (2) limit, segregate, or classify its employees or applicants for
27 employment in any way that would deprive or tend to deprive any individual of
28 employment opportunities or otherwise adversely affect the individual’s status as an
29 employee because of:

30 (i) the individual’s race, color, religion, sex, age, national origin,
31 marital status, sexual orientation, genetic information, or disability unrelated in
32 nature and extent so as to reasonably preclude the performance of the employment; or

33 (ii) the individual’s refusal to submit to a genetic test or make
34 available the results of a genetic test;

1 (2) The Commissioner may investigate whether § 3–702 of this title
2 has been violated on receipt of a written complaint of an applicant for employment or
3 an employee.

4 (e) The Commissioner may investigate whether Subtitle 9 of this title has
5 been violated:

6 (1) on the Commissioner’s own initiative;

7 (2) on receipt of a written complaint signed by the person submitting
8 the complaint; or

9 (3) on referral from another unit of State government.

10 **(F) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION UNDER**
11 **§ 3–803 OF THIS TITLE ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
12 **EMPLOYEE.**

13 3–704.

14 (b) (2) An employee in a retail establishment may choose, as a day of rest,
15 Sunday or the sabbath of the employee unless:

16 (i) outside Wicomico County, the employee is a managerial
17 employee, professional employee, or part–time employee; and

18 (ii) in Wicomico County, the employee is a managerial employee
19 or professional employee.

20 (3) An employee who chooses a day of rest:

21 (i) shall give written notice to the employer; and

22 (ii) during the course of employment, may change the day of rest
23 by giving written notice of the change to the employer at least 30 days before its
24 effective date.

25 (c) (1) This subsection does not apply to a managerial employee or
26 professional employee or, outside Wicomico County, a part–time employee.

27 (2) If an employer compels an employee to work on the day of rest that
28 the employee chooses under subsection (b) of this section, the employee is entitled to
29 bring an action against the employer to recover 3 times the regular rate of pay of the
30 employee for each hour the employee works on that day.

31 (f) An employer may not:

1 (1) discharge, discipline, discriminate against, or otherwise penalize
2 an employee who chooses a day of rest; or

3 (2) require an applicant for employment who seeks a workweek of at
4 least 25 hours to answer any question to identify the day that the applicant chooses as
5 a day of rest.

6 3-802.

7 (a) (1) In this section the following words have the meanings indicated.

8 (3) (i) "Employer" means a person that is engaged in a business,
9 industry, profession, trade, or other enterprise in the State.

10 (ii) "Employer" includes a person who acts directly or indirectly
11 in the interest of another employer with an employee.

12 **3-803.**

13 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
14 **MEANINGS INDICATED.**

15 **(2) "EMPLOYER" HAS THE MEANING INDICATED IN § 3-802 OF**
16 **THIS SUBTITLE.**

17 **(3) "LEAVE WITH PAY" MEANS TIME AWAY FROM WORK FOR**
18 **WHICH AN EMPLOYEE RECEIVES COMPENSATION.**

19 **(4) "PREMIUM BENEFITS" MEANS EMPLOYMENT BENEFITS SUCH**
20 **AS LEAVE, SENIORITY, LIFE, HEALTH, OR DISABILITY INSURANCE, OR**
21 **EDUCATIONAL OR RETIREMENT BENEFITS THAT ARE GREATER THAN THE**
22 **GENERAL EMPLOYMENT BENEFITS PROVIDED TO AN EMPLOYEE.**

23 **(5) "PREMIUM WAGES" MEANS ADDITIONAL COMPENSATION,**
24 **INCLUDING OVERTIME PAY OR COMPENSATORY LEAVE, FOR WORK PERFORMED**
25 **BEYOND THE NORMAL HOURS OF THE EMPLOYER'S BUSINESS.**

26 **(B) THIS SECTION APPLIES TO AN EMPLOYER THAT PROVIDES LEAVE**
27 **UNDER THE TERMS OF:**

28 **(1) A BARGAINING AGREEMENT; OR**

29 **(2) AN EMPLOYMENT POLICY.**

1 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN EMPLOYER
2 MAY NOT PROHIBIT AN EMPLOYEE FROM USING LEAVE TO OBSERVE A SABBATH
3 OR OTHER HOLY DAY IN ACCORDANCE WITH A SINCERELY HELD RELIGIOUS
4 BELIEF.

5 (D) (1) AN EMPLOYEE WHO EARNS MORE THAN ONE TYPE OF LEAVE
6 MAY ELECT THE TYPE OF LEAVE TO BE USED UNDER THIS SECTION.

7 (2) AN EMPLOYEE OF AN EMPLOYER MAY ONLY USE LEAVE:

8 (I) THAT HAS BEEN EARNED; AND

9 (II) IN ACCORDANCE WITH THE TERMS OF THE
10 EMPLOYMENT POLICY OR COLLECTIVE BARGAINING AGREEMENT THAT
11 PERTAIN TO THE TYPE OF LEAVE USED.

12 (3) (1) IF AN EMPLOYEE HAS NOT EARNED OR IS NOT ELIGIBLE
13 FOR LEAVE WITH PAY, THE EMPLOYER MAY REQUIRE THE EMPLOYEE WHO
14 WISHES TO USE LEAVE GRANTED UNDER THIS SECTION TO:

15 1. WORK ADDITIONAL HOURS EQUIVALENT TO THE
16 AMOUNT OF LEAVE; OR

17 2. TAKE LEAVE WITHOUT PAY.

18 (II) AN EMPLOYEE IS NOT ENTITLED TO PREMIUM WAGES
19 OR BENEFITS THAT MAY OTHERWISE BE APPLICABLE FOR HOURS WORKED TO
20 COMPENSATE FOR LEAVE UNDER THIS PARAGRAPH.

21 (4) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED AS
22 REDUCING:

23 (I) THE NUMBER OF HOURS THAT ARE COUNTED TOWARD
24 THE ACCRUAL OF AN EMPLOYEE'S SENIORITY, PENSION, OR OTHER BENEFITS;
25 OR

26 (II) ANY PREMIUM WAGES OR BENEFITS PROVIDED TO AN
27 EMPLOYEE UNDER THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.

28 (E) (1) AN EMPLOYER THAT CAN DEMONSTRATE TO THE
29 COMMISSIONER THAT REASONABLE ACCOMMODATION TO COMPLY WITH THE
30 REQUIREMENTS OF THIS SECTION WOULD CAUSE AN UNDUE HARDSHIP IS
31 EXEMPT FROM THIS SECTION.

1 **(2) THE COMMISSIONER SHALL CONSIDER AN ACCOMMODATION**
2 **TO BE AN UNDUE HARDSHIP IF THE ACCOMMODATION WOULD:**

3 **(I) REQUIRE UNREASONABLE EXPENSE OR DIFFICULTY;**

4 **(II) RESULT IN UNREASONABLE INTERFERENCE WITH THE**
5 **SAFE OR EFFICIENT OPERATION OF THE WORKPLACE; OR**

6 **(III) VIOLATE A BONA FIDE SENIORITY SYSTEM OR**
7 **COLLECTIVE BARGAINING AGREEMENT.**

8 **(3) THE COMMISSIONER SHALL CONSIDER THE FOLLOWING**
9 **CRITERIA TO DETERMINE WHETHER AN ACCOMMODATION CONSTITUTES AN**
10 **UNDUE HARDSHIP:**

11 **(I) THE IDENTIFIABLE COSTS OF THE ACCOMMODATION,**
12 **INCLUDING THE COSTS ASSOCIATED WITH:**

13 **1. LOSS OF PRODUCTIVITY; AND**

14 **2. RETAINING, HIRING, OR TRANSFERRING**
15 **EMPLOYEES FROM ONE FACILITY TO ANOTHER;**

16 **(II) THE NUMBER OF EMPLOYEES WHO WILL BE USING**
17 **LEAVE GRANTED UNDER THIS SECTION; AND**

18 **(III) FOR AN EMPLOYER WITH MULTIPLE FACILITIES, THE**
19 **DEGREE TO WHICH THE DISTANCE OR ADMINISTRATIVE OR FISCAL**
20 **RELATIONSHIP BETWEEN THE FACILITIES MAKES THE ACCOMMODATION MORE**
21 **DIFFICULT OR EXPENSIVE.**

22 **(F) AN EMPLOYEE MAY BRING A CIVIL ACTION AGAINST AN EMPLOYER**
23 **THAT VIOLATES ANY PROVISION OF THIS SECTION:**

24 **(1) AFTER NO MORE THAN 90 DAYS AFTER THE ALLEGED**
25 **VIOLATION OCCURRED; AND**

26 **(2) IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE**
27 **ALLEGED VIOLATION OCCURRED OR THE COUNTY IN WHICH THE PRINCIPAL**
28 **OFFICE OF THE EMPLOYER IS LOCATED.**

29 **(G) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**
30 **RECOVERY IN AN ACTION UNDER THIS SECTION, THE COURT MAY AWARD**

1 REINSTATEMENT OF ANY BACK PAY, REASONABLE COUNSEL FEES, AND
2 REASONABLE COURT COSTS.

3 (H) AN EMPLOYER MAY NOT DISCHARGE, DEMOTE, SUSPEND,
4 DISCIPLINE, OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE OR
5 THREATEN TO TAKE ANY OF THESE ACTIONS AGAINST AN EMPLOYEE:

6 (1) WHO EXERCISES RIGHTS GRANTED UNDER THIS SECTION; OR

7 (2) WHO FILES A COMPLAINT, TESTIFIES AGAINST, OR ASSISTS IN
8 AN ACTION BROUGHT AGAINST THE EMPLOYER FOR A VIOLATION OF THIS
9 SECTION.

10 (I) AN EMPLOYEE MAY NOT:

11 (1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT AGAINST AN
12 EMPLOYER; OR

13 (2) IN BAD FAITH, BRING AN ACTION OR TESTIFY IN AN ACTION
14 UNDER THIS SECTION.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2010.